



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of R.K., Vineland
Developmental Center

Discrimination Appeal

CSC Docket No. 2021-109

ISSUED: AUGUST 6, 2021 (ABR)

R.K., a Cottage Training Supervisor at Vineland Developmental Center (VDC) appeals the determination of the Chief of Staff, Department of Human Services (DHS), which found that she failed to present sufficient evidence to support a finding that she had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, on March 17, 2020, the appellant made a verbal complaint alleging that L.L., a Residential Services Worker, and T.H., a Licensed Practical Nurse, had sexually harassed her. Specifically, she alleged that L.L. touched her shoulder on July 17, 2018 and that T.H. grabbed her stomach in May 2018. In response, the DHS’s Office of Equal Employment Opportunity (EEO) conducted an investigation, during which it interviewed four individuals and reviewed four relevant documents. The EEO found that L.L. touched the appellant’s shoulder to get her attention and that the appellant responded by stating not to touch her. It added that L.L. complied and that there were no further incidents. Furthermore, the investigation did not find any witnesses or other evidence to substantiate the appellant’s claim that T.H. touched her stomach.

Complaint Against L.L.

On appeal to the Civil Service Commission (Commission), the appellant asserts that L.L. touched her more than one time in the workplace. However, she acknowledges that she does not have any proof in support of this allegation and she requests that the investigation into her claim be continued.

In response, the EEO states that it stands by its July 2020 determination that there was insufficient evidence to support the appellant's allegations against L.L. It submits that the appellant, in her March 2020 complaint, alleged that he "like[d] to touch on her" and that "it ha[d] been going on for a while." In addition, during her interview with the EEO in 2020, the appellant indicated that L.L. would occasionally place his hand on her shoulder and that on July 17, 2018 she gave L.L. notice not to touch her. The appellant told the EEO that L.L. complied, that there were no witnesses and that there were no other incidents. However, the EEO notes that when the appellant had previously filed a written complaint on July 17, 2018, she maintained that "[she] was in the kitchen during breakfast, and [L.L.] came up to [her] and touched [her] by patting [her] on her shoulders," but did not allege that she considered it to be sexual harassment at the time. L.L. stated in his July 17, 2018 written statement that he had seen the appellant in the kitchen with her back to him and that he had tapped her shoulder to let her know that help was needed with housekeeping. The EEO submits that during his interview with the EEO in 2020, L.L. denied ever sexually harassing the appellant. It states that based upon the foregoing, its investigation found that L.L.'s actions did not constitute sexual harassment. The EEO also advises that there were no witnesses to the July 17, 2018 incident or any other evidence to corroborate the appellant's claims against L.L. Accordingly, it avers that the Commission should find that the EEO did a proper investigation and that its finding that L.L. did not violate the State Policy was correct.

Complaint Against T.H.

On appeal, the appellant asserts that T.H. was untruthful. However, she acknowledges that she does not have any proof in support of this claim and she requests that the investigation into her complaint be continued.¹

In response, the EEO states that the accounts of this incident that the appellant gave it in 2020 were inconsistent with what she and others reported in May 2018. Specifically, the appellant stated in her March 2020 complaint that T.H. "grabbed her stomach" as if she was being groped or raped, and that during her interview with the EEO, she stated that T.H. grabbed her stomach or otherwise touched her with both hands. Conversely, the appellant reported to her supervisor, K.L., in May 2018 that T.H. poked her with her finger, but did not indicate that T.H. grabbed her stomach nor did she allege that she had been subjected to discrimination or harassment. The EEO submits that the accounts of both K.L. and T.H. were consistent with what the appellant reported in 2018. In this regard, K.L.

¹ The appellant also avers that she was also subjected to discrimination "[b]y being placed off duty between 2018, 2019 and 2020. And [sic] for a whole year" without an adequate explanation. In response, the EEO submits that the appellant raised these issues in an EEO complaint that is currently being investigated. Given that this issue is part of an ongoing investigation, it will not be discussed further in this decision.

informed the EEO that the appellant had told her in 2018 that T.H.'s shoulder had touched her shoulder and that she did not want to be touched. Similarly, T.H., in a written statement prepared on May 31, 2018, stated that she was beside the appellant and attempted to wish her a happy belated birthday. T.H. further indicated that after the appellant failed to respond, she gently nudged the appellant with her elbow, who proceeded to tell her "[d]on't touch me. I don't like it when people touch me." K.H. maintained that she promptly apologized and told the appellant that she would never touch her again. The EEO contends that the foregoing undermines the appellant's allegation that T.H. subjected her to sexual harassment, and that because there was no other evidence that T.H. sexually harassed the appellant, the appellant's appeal of its determination should be denied.

CONCLUSION

It is a violation of the State Policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories. *See N.J.A.C. 4A:7-3.1(a)3*. The protected categories include race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. *See N.J.A.C. 4A:7-3.1(a)*. The State Policy is a zero tolerance policy. *See N.J.A.C. 4A:7-3.1(a)*. Moreover, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)4*. It is noted that the burden of proof is on the appellant to provide information in support of her case. *See N.J.S.A. 11A:2-6(b)* and *N.J.A.C. 4A:2-1.4(c)*.

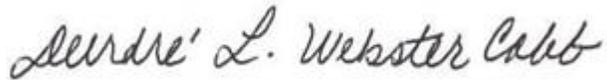
The Commission has conducted a review of the record in this matter and finds that an adequate investigation was conducted in response to the appellant's complaint against L.L. and T.H. and that the investigation failed to establish that the appellant was discriminated against in violation of the State Policy. The EEO found that there was no evidence that L.L.'s act of tapping the appellant on the shoulder on July 17, 2018 or T.H.'s May 2018 interaction with the appellant constituted sexual harassment. On appeal, the appellant acknowledges that she does not have any proof in support of her claims. Accordingly, the Commission finds that the appellant has failed to sustain her burden of proof with regard to the EEO's determination that there was insufficient evidence that L.L. or T.H. violated the State Policy and the appellant's appeal of that determination must be denied.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 4TH DAY OF AUGUST, 2021



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